* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **Crl.L.P No.209/2006**

% **Date of decision : 22.07.2008**

Delhi Development Authority ..... Petitioner
Through: Mr.C. Mohan Rao, Advocate for the petitioner/DDA.

Versus

M/s.Umang Motors & Ors ..... Respondents
Through : Mr.R.N. Vats, APP for the State.
Mr.Ankur Goel, Advocate for respondent Nos.2 & 3.

CORAM :-
*** HON'BLE MR. JUSTICE ANIL KUMAR**

1.	Whether reporters of Local papers may be allowed to see the judgment?	YES
2.	To be referred to the reporter or not?	NO
3.	Whether the judgment should be reported in the Digest?	NO

ANIL KUMAR, J.
*

1 The petitioner has impugned the order dated 15th July, 2006 passed by the learned Metropolitan Magistrate on a complaint under section 14 read with Section 29(2) of Delhi Development Act, 1957.

2 By order dated 15th July, 2006, it was held that the Appellant has been able to make out and prove his case beyond all shadow of reasonable doubt that the premises was misused by Mr. Rohit Gupta, but as far as the present respondents are concerned, it was held that

the Appellant has not been able to prove its case beyond all shadow of reasonable doubt, as there is not enough material to support the finding that the respondents no.2 and 3 are the persons in charge and responsible for conducting day to day affairs of the said firm, M/s Umang Motors, and therefore, the benefit of doubt was given to them and they were acquitted.

3 Learned counsel for the petitioner has contended that it was confirmed by the Sale Tax Department that M/s Umang Motors (Respondent No.1) is a partnership firm constituting respondent No.2 and 3 besides Mr. Rohit Gupta as partners. It has been asserted by the learned counsel that respondent No.2 and 3 and Mr. Rohit Gupta, who has been convicted, are partners and therefore, all are jointly and severely responsible and it is for the individual partners to show that they are not in charge or responsible for the business of the firm, as the conduct of business is exclusively within the knowledge of the partners and therefore, it is for them to show that they are not responsible for the business of the firm and it is not for the appellant/complainant to prove that all or any of them are responsible or in charge of the business. It has been very strongly contended by learned counsel that once it is proved that the accused are partners of the offending firm, it is for the accused to prove that they are not responsible or in charge of the business of the firm and falls within the exception carved out.

4 The learned counsel also contended that respondents were given opportunity to lead the evidence, however, they did not lead any evidence and in absence of any evidence on behalf of the respondents, the inferences as drawn by the learned M.M. could not be drawn. The Learned counsel also relied on Section 32 of the Delhi Development Act and Section 141 of Negotiable Instruments Act and contended that though they are para materia, the substantial provision of the Acts are entirely different in as much as Section 14 of the Delhi Development Act provides that no person shall use or permit to use any land or building in that zone otherwise than in conformity with such plan

5. To hold a partner of a firm vicariously liable u/S-32, the prosecution has to prove that at the time of commission of offence the partner was in charge of and was responsible to the firm for the conduct of business of the firm, or that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of the partner. Merely establishing that a person was a partner in a partnership firm is not sufficient to attract S-32.

6. In the present case all that can be gathered from the disposition of CW-2 is that Satish Kumar Gupta, Jai Kishan Goyal, Rohit Gupta and R.K Goyal are the partners of the firm M/s Umang Motors. The prosecution has placed nothing on record to prove that any of the

partners, other that Rohit Gupta, was responsible for the day to day affairs of the company. In fact Rohit Gupta had disclosed to CW-1, the Surveyor, at the time of inspection that he himself was the proprietor of the firm. Further in his cross-examination, CW-1 had admitted that he had not met Satish Kumar Gupta and Jai Kishan Goyal at the time of inspection nor had seen them working at M/s Umang Motors.

7. In Adarsh Marwah & Ors. v. Nehar Ranjan Bhattacharya & Anr, 41(1990)DLT167 this Court had held that 'no vicarious liability in criminal law could be imputed unless the partner is shown to be responsible for the business of the partnership firm. The principle enunciated is that the prosecution must plead that partner/Director of a firm/company to be prosecuted was in charge of and responsible for the conduct of the business of the company.'

8. In Sham Sunder and Ors v. State of Haryana, (1984)4 SCC 630, the Apex Court was dealing with Section 10 of the Essential Commodities Act, 1995 which is identically worded as Section -32 of the Delhi Development Act, 1957. The Court observed:-

> "6. From explanation to section 10 it will be seen that the company includes a firm and other association of persons. Section 10 provides that the person shall be deemed to be guilty of contravention of an order made under section 3 if he was incharge of and was responsible to the firm for the conduct of the business of the firm. What is of importance

to note is, that the person who was entrusted with the business of the firm and was responsible to the firm for the conduct of the business, could alone be prosecuted for the offence complained of.

7. Counsel for the State, however, relied upon the legal liability of partners and he argued that it would be for the accused partners to prove that the offence was committed without their knowledge or in spite of exercising due diligence on their part. He relied upon the proviso to Sub-section (1) of Section 10. It is true that under the Indian Partnership Act, 1932, a 'firm' or 'partnership' is not a legal entity but is merely an association of persons agreed to carry on business. It is only a collective name for individuals, carrying on business in partnership. The essential characteristic of a firm is that each partner is a representative of other partners. Each of the partners is an agent as well as a principal. He is an agent in so far as he can bind the other partners by his acts within the scope of the partnership agreement. He is a principal to the extent that he is bound by acts of other partners. In fact every partner is liable for an act of the firm. Section 2(a) of the Partnership Act defines an "act of a firm" to mean any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm.

8. But we are concerned with a criminal liability under penal provision and not a civil" liability. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not.

9. It is, therefore, necessary to add an emphatic note of caution in this regard. More often it is common that some of the partners of a firm may not even be knowing of what is going on day to day in the firm. There may be partners, better known as sleeping partners who are not required to take part in the business of the firm. There may be ladies and minors who were admitted for the benefit of

> partnership. They may not know anything about the business of the firm. It would be a travesty of justice to prosecute all partners and ask them to prove under the proviso to Sub-section (1) that the offence was committed without their knowledge. It is significant to note that the obligation for the accused to prove under the proviso that the offence took place without his knowledge or that he exercised all due diligence to prevent such offence arises only when the prosecution establishes that the requisite condition mentioned in Sub-section (1) is established. The requisite condition is that the partner was responsible for carrying on the business and was during the relevant time in charge of the business. In the absence of any such proof, no partner could be convicted. We, therefore, reject the contention urged by counsel for the State."

9. In Delhi Development Authority v. Kamalesh Kumari & anr, ILR 1993 Delhi 64 a complaint was filed against a partnership firm comprising of 4 partners and the owner of the premises on the allegation that they had put the property to non conforming use. This Court acquitting two of the partners had observed:-

> "Now, the question which arises for consideration is as to who are to be convicted for the commission of the said offence? In the complaint it was averred that all the partners of Maharaja Hotel are responsible for running of the business of the partnership and thus they are liable for commission of the aforesaid offences. It is evident from the record the complainant has not produced an iota of evidence to show that which of the partners has been responsible for and in charge of the business being run on behalf of the partnership firm. However, in the cross-examination of PW2 it has come out that on two or three visits to the hotel the witness had noticed Maharaj and Parvesh, the two partners of Maharaja Hotel, functioning. No suggestion was given that they were neither in-charge of nor responsible for the running of the business of the hotel. A suggestion was however, given specifically that there was no evidence to show that ladies were partners or were in charge of and responsible for running of the business. The

> omission to put any question with regard to Parvesh and Maharaj in cross examination in this connection leads to the inference that they were in charge of and were responsible for running of the business of the partnership at the relevant time. It is also to be emphasised that in Ex. DW2/A M.K. Sachdeva sought permission for running the lodging house after disclosing that the restaurant being run in that premises has since been closed and he has signed as a partner. This shows that he was conducting the business of the partnership and was in charge of the same. So far as Smt. Kamlesh Kumari is concerned, she being the owner is also guilty of the said offence for having permitted the said non conforming user on the part of Maharaja Hotel. We allow these appeals and convict Maharaja Hotel, a partnership firm, and its two partners namely Parvesh Sachdeva and Maharaj Sachdeva, for an offence punishable under S. 29(2) read with S.14 of the Act and convict Kamlesh Kumari of having permitted the said non conforming use for offence punishable under S. 29 read with S. 14 of the Act. "

10. The Appellant has not been able to establish that the respondents were responsible for day to day business of the firm and are liable. There is no apparent or manifest error in the order of the learned Metropolitan Magistrate dismissing the complaint of the appellant against the respondents. The Appeal in the facts and circumstances is without any merit and the Applicant/appellant is not entitled for leave to appeal against the order dated 15th July, 2006 dismissing the complaint of the applicant/appellant under section 14 read with section 29(2) of DDA Act. The application for grant of leave is therefore, dismissed.

July 22, 2008 **ANIL KUMAR J**
'Dev'